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Small Business Primer
Small Business Size Standards and Affiliation

Slide 1 Small Business Primer - Small Business Size Standards and Affiliation

U.S. Small Business Administration
Office of Government Contracting & Business Development
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Slide 2 Introduction

Size standards play an important role – in government programs. They define the maximum size a business can be, together with its affiliates, to qualify for federal small business programs.

Slide 3 Course Contents

This training module describes what size standards are, how they are established, why they are important, how they are used, where to find them and how to determine if a specific business concern – or your business – is considered a small business.

It also describes what is meant by affiliation and how such affiliations can impact the size of a business.

Slide 4 Statutory and Regulatory Authority

The foundation for size standards is established in the Small Business Act. This provision of law defines a small business as one that “is independently owned and operated and which is not dominant in its field of operation.” The law also requires that the definition of a small business vary from industry to industry to the extent necessary to reflect industry differences.

The Small Business Act gives the SBA the authority to establish small business size standards.

Regulations specifying small business size standards and governing their use are in Title 13, Code of Federal Regulations, Part 121. SBA’s size regulations pertaining to procurement are also found in the Federal Acquisition Regulation, or the FAR at 48 CFR Part 19.

Slide 5 Understanding Size Standards

Topic Divide -- Understanding size standards.

Slide 6 What is a Business Concern?

Before a business can qualify as a small business, it must satisfy the requirement that it is a business concern. This is important and foundational in understanding size standards.

What is a business concern? A business concern means that the entity is organized for-profit; has a physical place of business in the United States; and, operates primarily in the United States. If it does not operate primarily in the United States, it must make a significant contribution to the U. S. economy by paying taxes or using American products, materials, or labor.

Entities that do not meet the definition of a business concern, regardless of how small they are, cannot qualify as a small business concern for federal programs. That however, would not preclude them from contracting with the government or applying for grants and the like. It would, however, disqualify them from competing against small business concerns for contracts or benefits when being a small business is required.

Slide 7 Simply Put: What are Size Standards?

Ok... So what are size standards?

Simply put, size standards define whether a business entity is small and, thus, eligible for federal programs and preferences reserved for small businesses.

Size standards are established by industry, generally as defined under the North American Industry Classification System – more commonly known as NAICS.

The North American Industry Classification System classifies business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. economy. The NAICS industry codes define establishments based on the activities in which they are primarily engaged. SBA uses NAICS as a basis for establishing size standards.

Slide 8 Historical Perspective: Defining a Small Business

From an historical perspective...

The Small Business Act created the Small Business Administration – SBA, to aid, counsel and assist small businesses.

SBA uses its authority, also stated in the ACT to establish small business size standards, industry by industry. Size standards are usually stated in either the number of employees or average annual receipts.

Size standards are often used to establish eligibility for federal government programs reserved for small businesses. There may be other requirements, depending on the particular program, but being small for all of them is the first step and the size standards apply to them uniformly.

Slide 9 General -- Size Standards by Industry

Two common size standards cover most, but not all industries. The first, a small business for most manufacturing and mining industries is defined as having 500 or fewer employees. The

second, a small business for most nonmanufacturing industries is one that does not exceed \$7.5 million in average annual receipts.

To determine the applicable size standard, use the referenced SBA size standards tool or review the agency's table of small business size standards, or the noted regulatory link.

Slide 10 Specific -- Size Standards by Industry Sector

SBA uses the 6-digit NAICS industry codes in multiple 2-digit NAICS sectors in determining size standards. Many of the key sectors are highlighted in the slide.

However, again and importantly, use SBA's size standards tool, the agency's table of small business size standards, the summary of size standards by industry sector, or the referenced CFR link to find the specific size standard, within a certain industry sector.

Slide 11 Establishing Size Standards

Topic Divide -- Establishing size standards.

Slide 12 Establishing Size Standards: Methodology

The methodology for establishing size standards is very transparent.

SBA provides on its website a detailed explanation of size standards methodology that it applies in determining size standards. The methodology is outlined in a white paper that is available to the public. Review the whitepaper at your convenience for greater clarity about how size standards are established.

Slide 13 Using Size Standards

Topic Divide -- Using size standards.

Slide 14 Size Standards: Calculating Receipts

Calculating receipts...

A company's "receipts" are based on its most recently completed fiscal three years. "Receipts" are equal to the company's "total income" (or in the case of a sole proprietorship, "gross income") plus "cost of goods sold" as these terms are defined and reported on Internal Revenue Service tax return forms.

Receipts do not include: net capital gains or losses; taxes collected for and remitted to a taxing authority; proceeds from transactions between a concern and its affiliates; and amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker.

Slide 15 Size Standards: Calculating Number of Employees

Calculating the number of employees...

A business concern's number of employees is the average number of people employed for each pay period over its latest 12 calendar months. Any person on the payroll must be included as one employee regardless of hours worked or their temporary status. **That is, it is the “head count,” not “full time equivalents.”** This number includes the employees of all affiliates, regardless of what they do, where they are located, or how the affiliates are organized (such as nonprofit or for profit).

The number of employees of a concern in business for less than 12 months is simply the average for each pay period that it has been in business.

Slide 16 Using Size Standards: Government Procurement Programs

Size standards play an important role in determining eligibility for government programs, especially federal procurement, SBA's loan assistance, and innovation research programs.

Size standards are used to determine eligibility for many small business programs, including Small Business Set-asides, 8(a) Business Development, Women Owned Small Businesses, Economically Disadvantaged Women Owned Small Businesses, HUBZone, Service Disabled Veteran Owned Small Businesses, and other small business programs.

Links to multiple small business programs are profiled in the resource section of this course.

Slide 17 Using Size Standards: Qualifying as “Small”

Qualifying as small for government procurement programs.

The company must meet the size standard for the procurement. It is important to note, therefore, that the designated NAICS code may or may not be the same as the company's “primary” NAICS code. However, if the business meets the size standard for the designated NAICS code, then it is still eligible.

In determining if it meets that size standard, remember, as we discussed earlier, the company must include all of its annual receipts and number of employees, together with those of its affiliates, in determining if it qualifies.

It is not unusual, for a company with multiple capabilities, to qualify as small for one or more NAICS codes and not for others.

Slide 18 Using Size Standards: Other SBA Programs

Other SBA programs providing financial assistance.

Size standards also play an important role in determining eligibility for SBA financial assistance programs, such as its 7(a) loan program through local financial institutions, and other lending organizations.

The SBA's "Small Business Innovation Research" and "Small Business Technology Transfer" Programs promote federal small business high technology to improve the competitive capability of small research and development businesses. The emphasis is on emerging and under served small firms.

Links to these and other small business programs are in the resource section of this course.

Slide 19 Federal Procurement: Using Size Standards

Procurement...

Each year, small businesses benefit from about \$80 billion in federal prime contracts.

To bid on a federal contract – as a small business – a firm must self-certify that it is, in-fact a small business under the appropriate size standard in the solicitation. The firm does this by registering in the System for Award Management (SAM) at www.sam.gov. The size of the business at the time of self-certification is what the SBA considers to prevail for the contract.

In both the 8(a) business development and HUBZone programs, a participating firm must first meet the size standard for its primary industry as required in the program – then, it must meet the size standard for the NAICS code assigned to each individual contract on which it is bidding, even if that size standard is lower than the one for its primary industry.

Slide 20 SBA Loan Assistance Programs: Using Size Standards

Loan assistance...

To qualify for SBA business loan assistance, a business applicant must meet the size standard for the industry in which it, including its affiliates, is primarily engaged in, as well as the size standard for its primary industry, without including its affiliates. SBA will determine if the business is an eligible small business.

Business applicants for financial assistance under SBA's Small Business Investment Company (SBIC) and Community Development Company (504) programs, must meet the size standard for business loan assistance – just described or, as an alternative, not exceed net worth and net income limits of \$19.5 million and \$6.5 million, respectively for the SBIC program and \$15 million and \$5 million, respectively for the 7(a) and 504 programs.

Slide 21 SBA Loan Assistance (cont)

For assistance under SBA's surety bond assistance program, a business, combined with its affiliates, must meet the size standard for the primary industry in which such business, combined with its affiliates, is engaged.

For assistance under SBA's Economic Injury Disaster Loan Program, a business must meet the applicable size standard described in 13 CFR 121.

Slide 22 Innovation Research: Using Size Standards

Innovation research...

SBA's Small Business Innovation Research Program and the Small Business Technology Transfer program more commonly known as the SBIR and STTR programs provide small businesses with a competitive opportunity to propose innovations to help solve the research and development needs of the federal government.

To participate in this program, a small business must be either: at least 51 percent owned and controlled by US citizens or lawfully admitted permanent resident aliens, and, including affiliates, not exceed 500 employees; or, at least 51% owned and controlled by another business concern that is itself at least 51% owned and controlled by individuals who are citizens of, or permanent resident aliens in the United States.

Slide 23 Innovation Research: Using Size Standards (cont)

Further, in determining an SBIR firm's size, you must include the employees of all of its affiliates, wherever they are, and whether they are for-profit or not-for-profit entities.

Many SBIR participants and applicants for participation have one or more venture capital investors. This is an important issue, because determining the SBIR company's eligibility as a small business involves counting the employees of all of its affiliates. SBA has provided further explanation in its "Affiliation Discussion", with examples, of affiliation relationships, and how a company could be affected.

SBA's affiliation regulations can be found at 13 C.F.R. 121.702.

Slide 24 Finding Size Standards

Topic Divide -- Finding size standards.

Slide 25 Finding Size Standards

Size standards applicable to your business or other businesses can be easily determined by using SBA's size standards tool, referring to the table of small business size standards, or by reviewing the regulatory provision at 13 CFR 121.201. These links have been noted several times throughout this presentation because of their importance.

Slide 26 NAICS Codes: Finding Size Standards

Ok... so we have talked a lot about size standards: what they are, how they are applied, why they are important and how to find them. However, it is important to understand that size standards are based on NAICS industries. Therefore, it is foundational to understand how to determine NAICS codes and to understand what NAICS codes are applicable to your business, or what NAICS codes are applicable to other businesses.

Slide 27 Understanding Affiliation

Topic Divide -- Understanding affiliation.

Slide 28 Affiliation

Business affiliation is an important aspect of size standards.

In determining if a firm qualifies as a small business, SBA uses and evaluates the firm's annual receipts, number of employees and/or any foreign or domestic affiliations the firm may have. SBA's guidelines on affiliation can be found at 13 CFR 121.103.

Generally, affiliation exists when one or more individuals or businesses controls or has the power to control another or when a third party controls or has the power to control both businesses. Control may arise through ownership, management, or other relationships or interactions between the parties.

Further, control may be affirmative or negative. Negative control includes instances where a minority shareholder has the ability, under the firm's charter, by-laws, or shareholder's agreement, to prevent a quorum or otherwise block action by the board of directors or shareholders.

Slide 29 Affiliation -- General Principals

General principals of affiliation are highlighted in the following slides. Such general rules regarding affiliation are described in terms of stock ownership, stock options, common management, identity of interest, contractual relationships, newly organized businesses, joint ventures and franchise agreements.

Slide 30 Affiliation and Investors

In addition, some firms may have outside investors, such as a venture capital company, hedge fund, or private equity firm and their affiliation can impact eligibility for small business size status.

Slide 31 Stock Ownership: Affiliation

Regarding stock ownership...

An entity is an affiliate of a business if the entity owns or controls, or has the power to control, 50 percent or more of the firm's voting stock.

A business also is affiliated with an entity who owns and controls, or has the power to control, a block of voting stock that is large compared to all other outstanding blocks of stock.

Further, if two or more entities own or control, or have the power to control less than 50 percent of a firm's voting stock and (1) the minority holdings are all approximately equal in size and (2) all of the minority holdings taken together are large compared to any other stock holdings, affiliation is presumed to exist with each of those entities.

Finally, when a firm's voting stock is widely held and no single block of stock is large as compared with all other stock holdings, the business concern's Board of Directors and Chief Executive Officer (CEO) or President are deemed to have the power to control the concern unless evidence is provided to show otherwise.

Slide 32 Stock Options, Convertible Securities... Affiliation

Stock options, convertible securities and agreements to merge.

SBA treats stock options, convertible securities, and agreements to merge as though the rights granted have been actually exercised. In other words, SBA assumes *present effect* regarding an agreement to merge or to sell stock, even if it is only an agreement in principle.

If such rights have been granted or expressed, and they confer the power to control, affiliation exists.

Slide 33 Common Management: Affiliation

Common management.

If one or more officers, directors, managing members, or general partners of a business controls the Board of Directors and/or the management of another business, both firms are affiliates.

Slide 34 Identity of Interest: Affiliation

Identity of interest between individuals or businesses, including family members.

Individuals or firms that have identical or substantially identical business or economic interests may be treated as one party unless they can demonstrate otherwise. Family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, are among those treated this way by the SBA.

However, individuals or firms may seek to demonstrate that no affiliation exists by providing evidence establishing that apparently identical interests are, in fact, separate.

Slide 35 Contractual Relationships - Dependency: Affiliation

Contractual relationships or economic dependency.

A firm that is economically dependent upon another business will likely be found to be affiliated with the other business or businesses it is dependent upon.

Slide 36 Newly Organized Concerns: Affiliation

Newly organized concerns.

A new business that is organized by the former officers, directors, principal stockholders, managing members, or key employees of another concern may be considered affiliated with the older business concern, if the older concern furnishes the new business with contracts, financial or technical assistance, indemnification, or other facilities.

Such an apparent affiliation may be rebutted by demonstrating to the SBA that there is a clear line of fracture between the two businesses.

Slide 37 Joint Ventures: Affiliation

Joint ventures.

A joint venture is an association of individuals and/or business concerns for the purpose of combining efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis.

SBA may determine that the relationship between a prime contractor and its subcontractor is a joint venture, and that affiliation between the two exists.

Slide 38 Franchises and License Agreements: Affiliation

Franchises and license agreements.

Generally speaking, restraints imposed on a franchisee or licensee by its franchise or license agreement relating to standardized quality, advertising, accounting format and other similar provisions, generally will not be considered in determining whether the franchisor or licensor is affiliated with the franchisee or licensee. However, affiliation may be evident through other means, such as common ownership, common management or excessive restrictions upon the sale of the franchise interest.

Slide 39 Size Protests and NAICS Code Appeals

Topic Divide -- Size protests and NAICS code appeals.

Slide 40 Size Protests and Certificates of Competency

Ok, so we have covered a lot of ground concerning the importance, methodology and use of size standards. Another important element is size protests.

As we discussed earlier, in most cases a business self-certifies that it meets the standards of being small. In situations involving government contracts, the contracting officer determines or validates the size of a business based on standards in the CFR or the Table of Small Business Size Standards.

In some cases, another firm or interested party may protest the size status of the winning bidder or low offeror. In such cases, the contracting officer will forward the size protest to SBA's Area Office of Government Contracting --- that is responsible for the region where the protested firm's headquarters is located.

Only certain parties or individuals can make a size protest. They include: the unsuccessful offeror, the contracting officer, an SBA Government Contracting Area Office, other interested parties, or other government officials.

SBA's Certificate of Competency Program allows a small business to appeal a contracting officer's determination that it cannot fulfill the requirements of a specific government contract on which it is the apparent low bidder.

Slide 41 Size Determination

SBA, through its appropriate area office, makes a formal size determination after a size protest.

Such protests are typically addressed by the agency within ten days of receiving the formal protest. Formal size determinations made by the area office may be appealed to the Office of Hearings and Appeals at SBA headquarters in Washington, D.C., by any of the interested parties.

Use the referenced links to learn more about how to file a protest or to appeal a size determination.

Slide 42 Appeals of Size Determinations and NAICS Designations

To make an appeal to SBA's Office of Hearings and Appeals, the appeal petition must be in writing.

A size appeal must be served and filed within 15 calendar days after the receipt of the formal size determination. An untimely appeal will be dismissed.

The Office of Hearings and Appeals will review the appeal and issue its decision containing the facts and the basis for its conclusion. It will notify all parties involved in writing . This will be the final decision of the SBA.

Slide 43 Resources and Tools

Topic Divide -- Resources and tools.

Slide 44 Resources and Tools

Numerous resources are available to assist individuals who are interested in learning more about size standards and federal contracting.

Slide 45 Resources and Tools

Use these resources to become better informed.

Slide 46 Contact Us...

Thank you for taking the time to learn about small business size standards.

Much information has been discussed and we hope it is helpful. Please contact us with any questions you may have. Also, consider viewing other training modules in SBA's online **Government Contracting Classroom**.

Thank you.

Hyperlinks Contained in this Course

GC Classroom www.sba.gov/gcclassroom

Small Business Act www.sba.gov/content/small-business-act

13 CFR Part 121 (multiple references) www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title13/13cfr121_main_02.tpl

FAR Part 19 http://www.acquisition.gov/far/html/Subpart%2019_6.htm

What are NAICS Codes? www.sba.gov/content/north-american-industry-classification-system-codes-and-small-business-size-standards

SBA Size Standards Tool www.sba.gov/tools/size-standards-tool

Table of Small Business Size Standards www.sba.gov/content/small-business-size-standards

Summary of Size Standards by Industry Sector www.sba.gov/content/summary-size-standards-industry-sector

Size Standards Methodology www.sba.gov/content/size-standards-methodology

Contracting Support www.sba.gov/category/navigation-structure/contracting

Federal Acquisition Portal <http://acquisition.gov/index.asp>

SBA's Loan Assistance Programs <http://www.sba.gov/loanprograms>

SBA's Surety Bond Assistance Programs <http://www.sba.gov/surety-bonds>

SBA's Disaster Loan Assistance Programs <http://www.sba.gov/category/navigation-structure/loans-grants/small-business-loans/disaster-loans>

SBIR Program <http://www.sba.gov/offices/headquarters/oca/resources/6827>

STTR Program <http://www.sba.gov/offices/headquarters/oca/resources/6828>

Affiliation Discussion http://www.sba.gov/sites/default/files/affiliation_ver_03.pdf

Understanding NAICS Codes <http://www.sba.gov/content/north-american-industry-classification-system-codes-and-small-business-size-standards>

NAICS FAQs <http://www.census.gov/eos/www/naics/faqs/faqs.html>

COC – Certificate of Competency Program <http://www.sba.gov/content/certificate-competency-program>

Procedures for Size Protests and Requests for Formal Size Determinations <http://www.sba.gov/content/size-protests-size-determinations-and-appeals>

Appeals of Size Determinations and NAICS Code Designations <http://www.sba.gov/content/size-protests-size-determinations-and-appeals>

Size Protests, Size Determinations, and Appeals <http://www.sba.gov/content/size-protests-size-determinations-and-appeals>

SAM www.sam.gov

Code of Federal Regulation (13CFR) <http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>

SBA Government Contracting <http://www.sba.gov/about-offices-content/1/2986>

Procurement Technical Assistance Centers http://www.aptac-us.org/new/Govt_Contracting/find.php

SBA Size Standards <http://www.sba.gov/content/am-i-small-business-concern>

Women's Business Centers <http://www.sba.gov/content/womens-business-centers>

SCORE <http://www.score.org/chapters-map>

WOSB Information www.sba.gov/wosb

Women's Business Centers <http://www.sba.gov/tools/local-assistance/wbc>

Small Business Development Center Program

<http://www.sba.gov/offices/headquarters/osbdc/resources/11409>

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